IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11587 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEENABEN W/O NATWARBHAI SAVJIBHAI WAGHELA

Versus

COMMISSIONER OF POLICE, AHMEDABAD CITY

Appearance:

1. Special Civil Application No. 11587 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Kamlesh Kachhavah for ld.

counsel Ms. DR Kachhavah for the petitioner who is a lady detenu and ld. AGP Ms. HB Punani for the respondent State. Affidavit in reply filed on behalf of Commissioner Police, Ahmedabad City, tendered today by ld. AGP Ms. Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 16.06.2004 passed by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate for recording subjective satisfaction and passing the order of preventive detention, in reference to the Scheme of Sec.3 R/w 9(1) of the PASA Act, the detaining authority -Police Commissioner, Ahmedabad City has taken into account the fact of registration of four different criminal offences punishable under The Bombay Prohibition Act. On all the four occasions, the petitioner detenu was involved in the illegal activities with connection with country-made liquor between 22.06.2003 and 13.06.2004 i.e. within a span of about 1 Year. No formal statements of witnesses claiming privilege is recorded in the present case, but in view of the frequency of the offence, practically in the same area, the order of detention is passed.

4. The order of detention is challenged on various grounds mentioned in the petition. However, ld. counsel Mr.Kachhavah appearing for the detenu has challenged the legality and validity of the order mainly on ground that there is unreasonable and unexplained delay in considering the representation. He has submitted that this is a case of unexplained delay and on this sole ground the order of detention is vitiated and detention of the detenu becomes illegal and same should be terminated. In support of his submission, he has pointed out that the representation was despatched on 24.08.2004 and has reached the offence of the competent authority on 25.08.2004 i.e. on the next day as it was posted from Ahmedabad and received by the office at Gandhinagar. However, the said representation was decided on 31.08.2004. It is true that 28th & 29th August,2004 were holidays being fourth Saturday and Sunday. However,

delay is required to be explained qua the steps taken by the concerned authority on 26th & 27th August,2004. Even nothing had happened on 30th August,2004. Of course, affidavit on behalf of the detaining authority is there on record, but in absence of affidavit on behalf of the State of Gujarat explaining such delay, this can be said tobe the case of delay in dealing with representation that has remained unexplained. Zerox copy of the communication received by the detenu also reveals that the decision of the Government was conveyed to the detenu on 08.09.2004, though detenu was in Central Prison, Vadodara. So, time spent between 30.08.2004 and 08.09.2004 is also not explained. Thus, there is delay in both count viz. delay in considering the representation and delay in communicating the decision and on this sole ground, petition requires to be allowed. So, in view of the ratio of the decision of the Apex Court in the case of Harish Pahwa v/s State of U.P., AIR 1981 SC 1126, the impugned order of detention also requires to be quashed on the ground of delay in dealing with and communicating decision on the representation to the detenu promptly. Relevant observations of the Apex Court are reproduced as under:-

> "..... We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This is not having been done in the present case we have no option but to declare the detention unconstitutional."

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 16.06.2004, passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered

to be set at liberty forthwith if she is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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